

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
A La Carte and Themed Tier	)	
Programming and Pricing Options	)	MB Docket No. 04-207
For Programming Distribution on	)	
Cable Television and	)	
Direct Broadcast Satellite Systems	)	
	)	

**Reply Comments of  
Communications Workers of America**

Debbie Goldman  
George Kohl  
501 Third St. N.W.  
Washington, D.C. 20001  
(202) 434-1194 (phone)  
(202) 434-1201 (fax)  
[debbie@cwa-union.org](mailto:debbie@cwa-union.org)

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The Communications Workers of America (“CWA”) submits these reply comments pursuant to the Commission’s *Public Notice* regarding the provision of à la carte services on cable television and direct broadcast satellite system. The purpose of the comments is to assist the Commission as it prepares a Report to Congress on the ability of multichannel video programming distributors (“MVPDs”) to provide à la carte services to customers on a voluntary basis.<sup>1</sup>

CWA is a labor organization representing approximately 700,000 workers employed in telecommunications, publishing, manufacturing, health care, state and local government, and other public and private organizations. CWA members work in all segments of the telecommunications industry, including cable, local and long-distance telephony, wireless, and Internet access. CWA members are also consumers of telecommunications services.

CWA supports the mixed bundling/à la carte proposal of the Consumers Union and the Consumer Federation of America (“CU/CFA proposal”) because it would promote diversity, enhance consumer choice, and control skyrocketing cable rates. Under the CU/CFA proposal, cable and satellite operators would offer consumers a choice among packages of channels plus the additional option to select individual channels on an à la carte basis. A “basic” tier of programming including local broadcast channels that serve community needs and interests, national broadcast networks, and public, educational and government (PEG) channels would be preserved.<sup>2</sup>

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<sup>1</sup> FCC, “Public Notice,” *Comment Requested on A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems* (“Public Notice”), MB Docket No. 04-207, May 25, 2004.

<sup>2</sup> Comments of Consumers Union and Consumer Federation of America (“CU/CFA Comments”), *In the Matter of A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, MB Docket No. 04-207, July 15, 2004.

In the initial comments filed in this proceeding, a broad range of groups, including local and state regulators, rural telecom companies, competitive broadband providers, smaller cable companies, creative artists, minority programmers, religious networks, and parent organizations supported cable à la carte as an additional purchasing option to increase diversity of ownership and programming, support consumer choice in the marketplace, control prices, and as an alternative to content regulation to protect children against indecent programming.

Commentators also provided evidence to demonstrate that à la carte is technically feasible on digital channels, and, based on the Canadian experience, is also economically and operationally viable.

Diversity. Some commentators in this proceeding express concern that cable à la carte would create new barriers to increased diversity of programming on cable and satellite TV, particularly among programming produced by and for minorities and women. These commentators argue that bundling allows them to reach enough viewers to attract the advertising dollars they need to produce quality programming and to “make it” in the industry.

CWA shares the goals of independent and minority programmers who are trying to break in to the cable and satellite TV market with quality and diverse programming. However, the logic of their argument against à la carte fails on several counts. First, the current cable business model has failed miserably to promote program diversity, particularly for minority and female-targeted audiences. There is only one national cable channel (BET – owned by Viacom) that targets African-Americans, and another channel (TV One – 40 percent owned by Comcast) that is mostly available to Comcast subscribers. Most other African-American themed channels are

offered only on unnecessarily pricey digital tiers.<sup>3</sup> The only network owned by and targeted to women, Oxygen, has major investments from Time Warner. Si TV, a new Hispanic network, has backing from Time Warner and EchoStar. Certainly, if the alternative to à la carte is the current business model, diversity of programming will continue to suffer.

Many minority and women programmers are reluctant to go on record with criticism of the current system because they are so dependent upon the cable companies for distribution. However, two minority programmers, the Urban Broadcasting Company and the Black Education Network, reported to the Commission the difficulties they face breaking in under the current distribution rules.<sup>4</sup> According to Urban Broadcasting Company

Cable carriers often tell minority cable television networks that there is already enough programming that targets people of color...(t)he current cable television system simply does not work for minority cable television networks. It either shuts them out completely or squeezes them until they are only shells of what they were originally intended to be.<sup>5</sup>

Both Urban Broadcasting and the Black Education Network argue that à la carte would provide them -- and other minority, women, and independent programmers -- with an alternative path to reach potential viewers. Under the CU/CFA proposal, independent networks would continue to have the option to pitch their programming for inclusion in the cable companies' packages. But failing that approach, with à la carte options for carriage, they could take an entrepreneurial approach and go directly to consumers to build audience share. Niche programmers will experiment with different ways to succeed as niche programmers under à la

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<sup>3</sup> CU/CFA Comments, 6.

<sup>4</sup> Comments of Urban Broadcasting Company, *In the Matter of A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, MB Docket No. 04-207, July 15, 2004. Comments of Black Education Network, *In the Matter of A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, MB Docket No. 04-207, July 15, 2004. Comments of Brian Woolfolk, *In the Matter of A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, MB Docket No. 04-207, July 15, 2004.

carte. Some will fail, but others may succeed. As the Public Cable Television Authority concludes

Under à la carte carriage, the marketplace, as opposed to the cable operators, will now value niche programming based upon the test of subscriber receptability as opposed to the many other considerations which a cable operator may take into account, including, without limitation, tying arrangements with other programmers, launch incentives, ad potential and other factors.<sup>6</sup>

Certainly, the Commission should encourage proposals that would open up the vertically integrated MVPD industry to independently produced programming. The same media conglomerates that own the distribution channels produce the overwhelming majority of programming on cable, seriously limiting the diversity of programming. Either a cable or a broadcast company owns all but one of the top 15 cable channels (the exception is the Weather Channel).<sup>7</sup> The General Accounting Office (GAO) found that cable companies discriminate in favor of their own programming.<sup>8</sup> The Broadband Service Providers Association, a trade organization representing competitive broadband providers, notes that vertical integration limits diversity, citing a recent article in the *Wall Street Journal* that identifies Comcast, by virtue of its large national audience reach, as the virtual “gatekeeper” for any new content producer that wants to get carriage.<sup>9</sup> The Center for Creative Voices in the Media, an organization of creative

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<sup>5</sup> Urban Broadcasting Comments, 2.

<sup>6</sup> Public Cable Television Authority, *In the Matter of A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, MB Docket No. 04-207, July 15, 2004, 2.

<sup>7</sup> CU/CFA Comments, 4-5.

<sup>8</sup> General Accounting Office, “Issues Related to Competition and Subscriber Rates in the Cable Television Industry,” GAO-04-8, Oct. 2003.

<sup>9</sup> Comments of Broadband Service Providers Association, *In the Matter of A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, MB Docket No. 04-207, July 15, 2004, 9 citing George Anders, “Want to Start a TV Channel? See Amy Banse,” *Wall Street Journal*, Jan. 19, 2004.

artists, echoes this view.<sup>10</sup> Smaller cable providers add that à la carte will open up “shelf space” to independently-produced programming by eliminating the tying arrangements in the current distribution model – arrangements that require cable companies that want to purchase ESPN, for example, to pay for other Disney-owned networks as well. The American Cable Association provides specific examples where their small cable company members have been unable to launch or continue to carry independent channels like the Outdoor Channel, religious channels, and Spanish language programming.<sup>11</sup>

In addition, rural cable companies see the à la carte option as a means to reduce the bloated rates the cable companies charge the small, largely rural cable companies that lack bargaining power with the cable giants. According to the National Telecommunications Cooperative Association

Allowing rural providers the ability to purchase *a la carte* programming would be an important step toward reducing the negative impact of the small companies’ lack of leverage. Smaller carriers would be able to focus their limited programming budgets and channel capacity toward those networks that most interest their customer base.<sup>12</sup>

In sum, the CU/CFA mixed bundling/a la carte proposal would increase program diversity by opening up carriage opportunities to minority, women, and independent programmers who find it difficult under the current business model to break into the vertically integrated cable industry in which media conglomerates favor carriage of their own programming.

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<sup>10</sup> Comments of Center for Creative Voices in Media, *In the Matter of A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, MB Docket No. 04-207, July 15, 2004, 7.

<sup>11</sup> American Cable Association, *In the Matter of A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, MB Docket No. 04-207, July 15, 2004, vi.

<sup>12</sup> Comments of the National Telecommunications Cooperative Association, *In the Matter of A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast*

Prices. Since 1996, cable prices have skyrocketed at three times the rate of inflation.<sup>13</sup> A survey of its member local governmental cable regulators conducted by the National Association of Telecommunications Officers and Advisors (NATOA) found that more than 95 percent of respondents to their survey received complaints about annual rate increases by cable operators in markets not subject to Commission certification of “effective competition,” and 88 percent of respondents in communities certified by the Commission with “effective competition” received complaints about annual rate increases. Moreover, 85 percent of respondents reported that they have received complaints about not being able to choose the channels they pay for, and 74 percent are willing to regulate cable prices to address these complaints.<sup>14</sup>

Clearly, consumers continue to be at the mercy of cable’s monopoly power over prices in the marketplace. Regulators are frustrated by their inability to restrain price increases. Regulators repeatedly exhorted the Commission to obtain programming carriage contract information from cable operators. Although cable operators blame cable rate increases on the rising costs charged by programmers, particularly sports programmers, cable regulator commentators told the Commission that they have been unable to verify this claim. During franchise fee audits and rate regulation reviews, the regulators report that the cable operators have consistently refused to provide this information to them.<sup>15</sup> In order to evaluate the impact of

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*Satellite Systems*, MB Docket No. 04-207, July 15, 2004, 5.

<sup>13</sup> U.S. Bureau of Labor Statistics. The BLS adjusts for quality differences such as the addition of more channels.

<sup>14</sup> National Association of Telecommunications Officers and Advisors Comments, *In the Matter of A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, MB Docket No. 04-207, July 15, 2004, iv.

<sup>15</sup> Comments of the City of Seattle, Department of Information Technology, Office of Cable Communications, *In the Matter of A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, MB Docket No. 04-207, July 15, 2004; Comments of the State of New Jersey, Division of the Ratepayer Advocate, *In the Matter of A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, MB Docket No. 04-207, July 15, 2004; Comments of the New Jersey Board of Public Utilities; *In the Matter of A La*

à la carte on pricing, the Commission must obtain program carriage contract information from cable operators, subject to protective order.

The option of à la carte carriage offers consumers the opportunity to control their escalating cable bill by ordering only those channels they want. Viewers who do not want to watch expensive ESPN, for example, may be able to realize significant savings by ordering only those channels that they want to view.

Alternative to Content Regulation for Indecency. CWA is a staunch advocate of Constitutionally protected free expression, and as such, fearful of government regulation of programming content. We concur with the Center for Creative Media Voices that the à la carte option “is a far better structural solution to indecency concerns than government regulation of program content, which chills Constitutionally-protected free, original, creative expression – the very speech the Commission should encourage.” Commentators on the Right and the Left concur.<sup>16</sup>

Consumer choice. Consumers want the ability to select their own packages of cable programming. Surveys by Consumers Union and the Consumer Federation of America find that two-thirds of respondents want to be able to pick their own channels, including Hispanic and African-American respondents.<sup>17</sup> The Seattle regulators’ survey found that 66 percent of respondents would choose à la carte if it were available and almost half (46 percent) would even pay a little more if they could pick their own packages.<sup>18</sup>

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*Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, MB Docket No. 04-207, July 15, 2004; NATOA Comments.

<sup>16</sup> Comments of Creative Voices in Media, 2; Comments of Parents Television Council; Comments of CU/CFA.

<sup>17</sup> CU/CFA Comments, 9.

<sup>18</sup> Seattle Comments, 2.



Technical feasibility. Digital cable and satellite would allow subscribers to select the channels they want to purchase through their digital converter box. Approximately 40 percent of current cable customers subscribe to digital service, and thus are instantly capable of accessing à la carte. The CU/CFA proposal would not require the à la carte option on analog. To facilitate the digital transition, the CU/CFA recommend public policy intervention to assure affordability of the digital set-top box.<sup>19</sup>

Canada as a model. Commentators point out that consumers in numerous Canadian communities already have access to a mixed bundling/à la carte model. In Montreal, for example, Videotron offers its customers the option of network packages or à la carte selection. The Center for Creative Voices in Media calculates that under the Videotron pricing model, a customer that purchased digital cable and 20 of the 90 different channels offered à la carte would pay only \$36 US a month.<sup>20</sup> Rogers Communications, Canada's largest cable company, offers a 30-channel analog basic package for about \$24 per month (Canadian). If subscribers also lease a digital box for \$8.95 a month, they have the option of purchasing one to 30 channels for an additional cost.<sup>21</sup>

Certainly, U.S. cable consumers should have the same opportunity to exercise choice in the marketplace as do Canadian cable customers.

Workers rights. Finally, CWA applauds the moral vision of the Leadership Conference on Civil Rights in calling for employment practices in the industry that fully support the right of workers to organize free from employer interference. The American Rights at Work report that the Leadership Conference attached to their comments makes abundantly clear that Comcast

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<sup>19</sup> CU/CFA Comments, 8-9.

<sup>20</sup> Center for Creative Voices in the Media Comments, 12 and Appendix.

arrogance in the marketplace is matched by the arrogance with which it treats its employees' desire for an independent, collective voice at work.<sup>22</sup>

Respectfully Submitted,

George Kohl  
Assistant to the President/Director of Research  
Communications Workers of America

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<sup>21</sup> Seattle Comments, 3.

<sup>22</sup> American Rights At Work, "Comcast and the Future of Workers' Rights in Telecommunications," June 2004. *See also* Comments of Leadership Conference of Civil Rights, *In the Matter of A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, MB Docket No. 04-207, July 15, 2004.